



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

February 6, 2019

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John Thomas Viti, Esq.
Bureau of Professional Medical Conduct
NYS Department of Health
90 Church Street
New York, New York 10007

Andrew L. Zwerling, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021

Muneer Imam, M.D.
2 Union Avenue
Center Moriches, New York 11934

RE: In the Matter of Muneer Imam, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 19-026) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Riverview Center
150 Broadway – Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A black rectangular redaction box covering the signature of James F. Horan.

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cmg
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT

In the Matter of

Muneer Imam, M.D. (Respondent)

Administrative Review Board (ARB)

A proceeding to review a Determination by a Committee
(Committee) from the Board for Professional Medical
Conduct (BPMC)

Determination and Order No. 19-026

Before ARB Members D'Anna, Koenig, Grabiec, Wilson and Milone
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): John Thomas Viti, Esq.
For the Respondent: Andrew L. Zwerling, Esq.

After a hearing below, a BPMC Committee found that the Respondent committed professional misconduct by violating terms of probation under a prior disciplinary order. The Committee voted to suspend the Respondent's license to practice medicine in New York State (License) for six months, to place the Respondent on probation for three years and to fine the Respondent \$18,000.00. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2018), the Petitioner asks the ARB to overturn the Committee's Determination on penalty and revoke the Respondent's License. After reviewing the record in this matter, the ARB votes 3-2 to overturn the Committee and revoke the Respondent's License.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent committed professional misconduct under the definition at New York Education Law (EL) §§ 6530(29) (McKinney Supp. 2018) by violating the probation terms from an April 5, 2016 Consent Agreement (Agreement). Following the hearing, the Committee rendered the Determination now under review.

After BPMC brought charges against the Respondent alleging professional misconduct, the Respondent admitted in the Agreement that he could not defend successfully against at least one allegation of misconduct. The Respondent then stipulated to a stayed 36-month License suspension and 36 months on probation under the terms that appeared in an attachment to the Agreement. Those terms include the requirement that the Respondent practice only when monitored by a licensed physician certified in the same specialty as the Respondent (Monitor), maintain a mandated level of malpractice insurance (Insurance) and complete a continuing medical education program (CME). The Agreement became effective April 12, 2016 and required the Respondent to have the Monitor and Insurance in place within 30 days or by May 12, 2016.

The Committee found that the Respondent practiced medicine during the months of May, June, July, August, September, October, November and December 2016, and January 2017 without the Monitor and Insurance required under the Agreement's probation terms. The Committee found further that the Respondent disregarded meeting requests and requests for information from the Physician Monitoring Program at the Office for Professional Medical Conduct (Monitoring Program). The Committee found that the Respondent finally attended a meeting with the Monitoring Program in May 2017, which the Monitoring Program had first requested in April 2016. The Respondent finally obtained the Insurance in April 2017 and the approved Monitor in May 2017. The Committee sustained eighteen of twenty specifications charging misconduct due to violating probation. The Committee found that the Respondent violated probation by practicing without the Monitor and without the Insurance at required levels.

In reaching its findings and conclusions, the Committee found credible the testimony by Annette Palk from the Monitoring Program. This testimony established that the Monitoring Program made repeated attempts to obtain the Respondent's cooperation in meeting the requirements under the Agreement. The Committee rejected testimony from the Respondent, which attempted to shift responsibility for the non-compliance to the Monitoring Program.

At the point that the Committee turned to considering the sanction for the Respondent's probation violations, the Committee became aware that a BPMC Committee disciplined the Respondent in 1993 for careless practice, lack of attention to detail and failure to appreciate the severity for patient illness. The penalty in the 1993 proceeding placed the Respondent on probation and required the Respondent to undergo retraining. The Committee's Determination, in the current case, noted that in the Agreement, the Respondent admitted that he could not defend against at least one misconduct allegation. Those allegations involved failure to render or note appropriate evaluation for patients for whom the Respondent prescribed controlled substances.

The Committee rejected revocation as a penalty in this case as being too severe, because there was no evidence of patient harm. The Committee did recognize, however, that the Respondent's disregard of the Agreement demeans the process intended to protect patients. The Department allowed the Respondent to continue in practice because the Respondent agreed to terms and conditions under the Agreement. The Committee found that rather than using the opportunity, the Respondent ignored the Monitoring Program's attempts to meet with the Respondent, disregarded the terms and conditions under the Agreement and then blamed the Monitoring Program at hearing for the Respondent's non-compliance. The Committee concluded that the Respondent's misconduct warranted a significant penalty. The Committee voted to suspend the Respondent's License for six months, to fine the Respondent \$18,000.00 and to require that the Respondent complete a new period of three years on probation under the same terms and conditions as under the Agreement. The Committee rendered their Determination on July 19, 2018.

Review History and Issues

On July 30, 2018, the Administrative Officer for the ARB received July 27, 2018 letters from the Respondent (Respondent's Letter) and his former counsel, Scott C. Watson, Esq. The letter from Mr. Watson indicated that Keller, O'Reilly & Watson, P.C. no longer represented the

Respondent. The Respondent's Letter stated that the Respondent had ceased practicing medicine, acknowledged that he would pay the fine, indicated that he understood he would be on probation following the suspension and named a physician he proposed as his monitor. The return address on the Respondent's Letter was 2 Union Avenue, Center Moriches, New York.

This proceeding commenced on August 6, 2018, when the ARB received the Petitioner's August 1, 2018 Notice requesting Review. The Respondent's copy of the Review Notice went to the Respondent at the Union Avenue address. The Petitioner advised the Administrative Officer for the ARB on August 9, 2018 that the Union Avenue address was no longer active because it was an office address that was closed. The Petitioner then listed a mailing address for the Respondent in [REDACTED] New York, a second address in [REDACTED] and an email address for the Respondent. The Petitioner indicated that the Notice of Review had gone to all three of those addresses. The Petitioner submitted its Review Brief on August 29, 2018.

The Petitioner's Brief asked the ARB to overturn the Committee and revoke the Respondent's License. The Petitioner described the penalty the Committee imposed as far from adequate. In response to the Committee's decision to reject revocation as a penalty due to the lack of patient harm, the Petitioner argued that patient harm is not the sole factor to consider, but rather the totality of the circumstances. The Petitioner contended that the Respondent's failure to practice with a monitor increased the risk of patient harm substantially. The Petitioner repeated the Committee's note that this case was not the first time that patient safety was an issue for the Respondent. The Petitioner argued further that this is the third time the Respondent has been found guilty of misconduct, which increases the risk of patient safety in the future and demonstrates that the Respondent is unlikely to be successful at rehabilitation.

The law firm of Garfunkel Wild, PC, by Andrew J. Zwerling, Esq., submitted a letter to the ARB on October 3, 2018, indicating that the firm was just retained by the Respondent and requesting a four-week extension of the record to answer the Petitioner's appeal. The request indicated that the Petitioner's appeal was not sent to the Respondent correct address. The request attached a copy of an envelope that was mailed to [REDACTED] rather than the Respondent's correct address of [REDACTED]. The request indicated that a copy of the request had gone to the Petitioner. The Administrative Officer forwarded the request to the ARB Members and we granted the extension initially.

When the Administrative Officer advised the parties about the extension, the Petitioner indicated it had not received the request. The Petitioner also indicated that its brief had gone to the Respondent at four different addresses, including the Respondent's email. The Petitioner asked that the ARB deny the request for extension.

The ARB now rejects the request for extension for reasons we detail below. The record for review contained the Committee's Determination, the hearing record, the Respondent's Letter and the Petitioner's Brief.

ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL §230-a permits. The ARB may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan

v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3rd Dept. 1993); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3rd Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3rd Dept. 1995). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3rd Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

Determination

The ARB has considered the record. We affirm the Committee's Determination that the Respondent violated probation. The Respondent filed no challenge to the Committee's Determination on the charges. We reject the request for the extension. The Respondent had notice of the Petitioner's appeal no later than mid-August. There was, therefore, adequate warning about the need to file a reply brief before the Petitioner submitted its brief and before the Respondent's reply was due. The Respondent gave no explanation why he waited for almost a month past the date for the reply to request an extension. The ARB votes 3-2 to overturn the Committee and revoke the Respondent's License.

The ARB majority concludes that allowing the Respondent to retain his License after his latest misconduct would make a mockery of the probation system. The Respondent has received disciplinary penalties twice already that should have deterred the Respondent from further misconduct. The Respondent received a chance through the Agreement to retain his License, even with the 1993 misconduct on his record, if the Respondent fulfilled the obligations under the Agreement. The Respondent began ignoring those obligations immediately after entering the Agreement. Although we question why it took a year before disciplinary action began against the Respondent, we agree with the Committee that the Respondent bears the sole responsibility for his failure to comply with the terms under the Agreement. The majority agrees with the Petitioner that the Respondent has proven himself unfit for rehabilitation.

The members in dissent agree with the Committee that the misconduct in this case does not rise to the level to warrant revocation. The minority concludes that the Committee imposed a substantial penalty that was appropriate and consistent with the Committee's findings and conclusions.

ORDER

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB votes 3-2 to overturn the penalty the Committee imposed and to revoke the Respondent's License.

Peter S. Koenig, Sr.
Steven Grabiec, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.

In the Matter of Muneer Imam, M.D.

Linda Prescott Wilson, an ARB Member affirms, that she participated in the deliberations in this case and that this decision reflects the Determination of the ARB majority in the Matter of Dr. Imam.

Dated: 30 January, 2019



Linda Prescott Wilson

In the Matter of Muneer Imam, M.D.

Peter S. Koenig, Sr., an ARB Member affirms, that he participated in the deliberations in this case and that this decision reflects the Determination of the ARB majority in the Matter of Dr. Imam.

Dated: January 30, 2019

A black rectangular box redacting the signature of Peter S. Koenig, Sr.

Peter S. Koenig, Sr.

In the Matter of Muneer Imam, M.D.

Steven Grabiec, M.D., an ARB Member affirms, that he participated in the deliberations in this case and that this decision reflects the Determination of the ARB majority in the Matter of Dr. Imam.

Dated: 2 / 4, 2019

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Steven Grabiec, M.D.

In the Matter of Muneer Imam, M.D.

Richard D. Milone, M.D., an ARB Member, affirms that he participated in the deliberations in this case and that this decision reflects the Determination of the ARB majority in the Matter of Dr. Imam.

Dated: January 30, 2019



Richard D. Milone, M.D.

In the Matter of Muneer Imam, M.D.

John A. D'Anna, M.D., an ARB Member, affirms that he participated in the deliberations in this case and that this decision reflects the Determination of the ARB majority in the Matter of Dr. Imam.

Dated: 2-4, 2019



John A. D'Anna, M.D.